

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HEUNG YOL KIM,

Plaintiff,

v.

J & J SAFETYMATE CORP. and
YUN HEE KIM

Defendants.
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MEMORANDUM AND ORDER

1:22-cv-01070-OEM-TAM

ORELIA E. MERCHANT, United States District Judge:

On February 28, 2022, plaintiff Heung Yol Kim (“Plaintiff”) filed the instant action. Complaint (“Compl.”) ECF 1. Plaintiff seeks to recover unpaid wages under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq., and the New York Labor Law (“NYLL”), Art. 19 § 650, et seq. *Id.* ¶ 1. On August 7, 2023, Plaintiff moved for summary judgment on his FLSA and NYLL claims, reserving the issue of damages for trial. On December 11, 2023, this Court referred Plaintiff’s motion for summary judgment to Magistrate Judge Taryn A. Merkl. On February 2, 2024, Magistrate Judge Merkl issued a report and recommendation (the “R&R”) recommending that the motion for summary judgment be denied in its entirety. R&R, ECF 20 at 1-2.

The R&R clearly stated that “objections to this report and recommendation must be filed, with a courtesy copy sent to the Honorable Orelia E. Merchant at 225 Cadman Plaza East, Brooklyn, New York 11201, within fourteen (14) days of filing. Failure to file objections within the specified time waives the right to appeal both before the district court and appellate courts. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(a) (providing the method for computing time). Failure to file objections within the specified time waives the right

to appeal the District Court’s order. *See, e.g., Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (explaining that ‘failure to object timely to a . . . report [and recommendation] operates as a waiver of any further judicial review of the magistrate [judge’s] decision’).” R&R at 21. To date, no party has filed an objection to the R&R.

If clear notice has been given of the consequences of failing to object and there are no objections, the Court may adopt the R&R without de novo review. *See Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (“Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”) (internal citations omitted). The Court will excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears in Magistrate Judge Merkl’s thorough and well-written decision. Accordingly, the Court adopts the R&R.

Therefore, Plaintiff’s motion for summary judgment is denied in its entirety. The parties are instructed to file their proposed Joint Pretrial Order in conformance with the Court’s Individual Practices and Rules within 30 days from the entry of this order.

SO ORDERED.

/s/
ORELIA E. MERCHANT
United States District Judge

Dated: Brooklyn, New York
February 22, 2024